

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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Ref 8EPR-EP

Jan Sensibaugh, Acting Director  
Montana Department of Environmental Quality  
P.O. Box 200901  
Helena, Montana 59620-0901

Matt Millenbach, State Director  
Bureau of Land Management  
P.O. Box 36800  
Billings, Montana 59107-6800

RE: EPA's Scoping Comments for the Oil and Gas Resource  
Management Plan Amendment and Montana Statewide  
Environmental Impact Statement

Dear Ms. Sensibaugh and Mr. Millenbach:

With this letter EPA is submitting comments on the scope of the Environmental Impact Statement (EIS) that is to analyze the potential impacts of proposed oil and gas, including coal bed methane (CBM), development in Montana. These comments focus on key issues for consideration and analysis in this upcoming EIS and Resource Management Plan (RMP) Amendment. EPA supports plans that assure this source of clean energy, natural gas, be developed expeditiously as long as such plans provide for proper protection of the environment and natural resources. Some of the following issues have been discussed in meetings between our staffs in September of 2000 and January of 2001, and we would like to take this opportunity to elaborate further on them.

## **EPA's Involvement**

We understand that the Montana DEQ, as the lead agency for the State of Montana, and the Bureau of Land Management (BLM), as the lead federal agency, have offered "Cooperating Agency" status to other governmental entities. In view of EPA's Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) authorities, which are described in more detail below, it would be appropriate that EPA be included as a cooperating agency in the process of developing this EIS. However, our ability to effectively participate is dependent upon sufficient staff-to-staff efforts, including involvement with the Tribes and other stakeholders in Montana and Wyoming. We are unable to commit to becoming a cooperating agency unless supplemental travel funds are provided by the lead agencies. We therefore request that BLM consider if financial support is available for these efforts.

EPA's authorities related to the proposed actions are outlined below:

- Clean Water Act Section 402, 33 U.S.C. Section 1342, and 40 CFR Parts 122-125. Under Section 402(b) of the CWA and 40 CFR Part 123, EPA has authorized the States of Montana and Wyoming to issue National Pollutant Discharge Elimination System ("NPDES") permits for discharges of pollutants from point sources into waters of the United States located in Montana and Wyoming and excluding Indian country as defined at 18 U.S. C. 1151. As you are aware, various coal bed methane operators have applied to the States of Wyoming and Montana for NPDES permits to discharge water produced from CBM operations into waters of the United States. EPA retains an oversight and partnership role in state NPDES programs. As described in 40 CFR Part 123, Subpart C, EPA reviews proposed state NPDES permits for compliance with CWA requirements. For discharges in Indian country (a term that is defined in 40 CFR Section 122), EPA has direct implementation authority for issuing NPDES permits.
- Clean Water Act Section 401, 33 U.S.C. Section 1341, and 40 CFR Part 121. These provisions describe EPA's role in addressing certain discharges in one state that may affect the quality of water within any other state.
- Section 303(d) of the CWA, 33 U.S.C. Section 1313(d) and 40 CFR Part 130. These provisions require states to identify waters that need Total Maximum Daily Loads (TMDLs) and to establish TMDLs for them, with an oversight and partnership role for EPA. In addition, EPA is under a court order to approve or establish TMDLs for all waters on Montana's 1996 Section 303(d) list of waters needing TMDLs by May 5, 2007.
- The Safe Drinking Water Act (SDWA), Sections 1421 through 1429 and 40 CFR Parts 144-147 regarding underground injection control (UIC). Should produced water from CBM operations be injected into the ground, Class II and/or Class V UIC permits may be necessary. EPA and the States administer the UIC program in order to provide protection to underground sources of drinking water and public water systems under provisions of the SDWA, Part B. EPA administers the Class V UIC program in the State of Montana and all classes of UIC wells on Indian country lands in Montana and Wyoming. EPA has approved Wyoming's program for administering the UIC program for all five classes of UIC wells and Montana's program for administering the UIC program for Class II wells, and EPA retains an oversight and partnership role with these States for these programs. EPA's approvals of the States' authorities to administer these programs do not extend to Indian country.

- Section 309 of the Clean Air Act, 42 U.S.C. Section 7609. This provision calls for EPA review and comment on the environmental impact of major federal actions to which the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4332(2)(C), applies.
- Executive Order 13175. This Order requires federal agencies to insure meaningful opportunity for and timely input by tribal officials in the development of regulatory policies that have tribal implications. The Executive Order reflects the federal government's trust responsibility to federally-recognized Indian tribes. Pursuant to this trust responsibility, the federal government establishes regular and meaningful consultation and collaboration with tribes on a government-to-government basis when federal activities may affect Indian tribes.

Consistent with the responsibilities mentioned above, EPA intends to provide technical information and support to Montana, Wyoming, the Crow Tribe, and the Northern Cheyenne Tribe, as described below. EPA will perform these functions regardless of whether it is formally designated as a cooperating agency for this EIS, although EPA will make every effort to coordinate these functions with the EIS process as appropriate. We will specifically focus our efforts, in addition to our NEPA review role, on the following:

- EPA will provide technical assistance, as appropriate, to further the joint development of a TMDL on the Tongue River at the border between Montana and the Northern Cheyenne Tribe and at the border between Montana and Wyoming. Currently, EPA and the State of Montana are subject to a court order that prohibits NPDES permits for new or increased discharges until all necessary TMDLs are established for a particular water quality limited segment (WQLS). (See September 21, 2000 order in *Friends of the Wild Swan, et al., v. U.S. Environmental Protection Agency, et al.*, CV 97-35-M-DWM, U.S. District Court for the District of Montana, Missoula Division.) The Tongue River, the Powder River and the Little Powder River have been included on Montana's 1996 list of WQLSs, that is these are streams that need TMDLs.
- EPA is currently processing an application from the Crow Tribe to administer Clean Water Act water quality standards, pursuant to Section 518 of the Clean Water Act and 40 CFR Section 131.8. The Crow Tribe submitted its application in June of 1999. The Northern Cheyenne Tribe submitted a draft application to EPA in January of 2001 and the Tribe anticipates submitting a final application to EPA this year.
- Under Section 402 of the CWA, EPA will provide a technical and economic analysis of "Best Professional Judgement" (BPJ) for the management of CBM produced waters. Public participation and meetings regarding EPA's development of BPJ for CBM discharges will be coordinated with the lead agencies and, to the extent possible, may be combined with the public participation process managed by the lead agencies. We anticipate that by June, 2001, EPA will have a draft BPJ policy ready for public review.

- EPA is now processing applications from Redstone Gas Partners, LLC for two Class V UIC area permits on Redstone's CX Ranch west of the Tongue River. Redstone's application currently proposes a total of six injection wells. (The pertinent applications were received on December 15, 2000 and December 26, 2000 and are now referenced as EPA UIC Area Permit No. MT5901-00000 and MT 5909-00000.) Public participation and meetings regarding review of this application will be coordinated with the lead agencies. EPA anticipates it will provide the lead agencies and interested parties a draft permit and "Statement of Basis" for this UIC permit decision by March 30, 2001.

#### Summary of Scoping Comments

For the Tongue River, EPA supports a collaborative approach between the Montana DEQ, the Wyoming DEQ, the Crow Tribe, and the Northern Cheyenne Tribe to develop interstate water management plans to assure that CBM operations do not cause any water quality standards violations. We are particularly concerned with protecting all designated uses, and thus water quality, of the river and its tributaries. In order to protect these designated uses, it would be appropriate to develop a Total Maximum Daily Load (TMDL) to establish water quality targets on the Tongue River at the border between Montana and the Northern Cheyenne Tribe and at the border between Montana and Wyoming. At the same time, we support a process to assign assimilative capacity for the Tongue River among the parties listed above who express an interest.

Similarly, on the Powder and Little Powder Rivers, which do not flow through or adjacent to Indian country lands, we expect that the EIS process will assist the States of Wyoming and Montana in protecting designated uses and in resolving their own allocation of these streams' assimilative capacity. The States of Montana and Wyoming already are in ongoing communication regarding the water quality impacts of coal bed methane operations. We understand that these interstate discussions will address the manner in which water quality standards at the border will be defined. We encourage these efforts and suggest that these interstate issues be included within the scope of this NEPA analysis to provide for public involvement on these matters as appropriate.

EPA has had several inquiries regarding public participation to our own CBM-related activities in the Powder River Basin. EPA does encourage public participation in this lead agency and multi-state process. We encourage the states within our Region to allow for the maximum degree of public participation in their CWA and SDWA permitting and related actions. For integration and efficiency, we request that the co-lead agencies coordinate with us to develop public participation to jointly manage these processes within the context of this NEPA process.

EPA will review and comment, as appropriate, on various sections of the EIS as provided by the lead agencies. To the extent resources allow, EPA will attend meetings of the cooperating agencies as requested by the lead agencies. We are especially interested in participating in discussions regarding the scope of analysis and reasonably foreseeable development, and the development of alternatives. We hope that some early input in the initial determination of the scope of issues to be covered in this EIS will allow EPA and the other governmental parties to resolve any outstanding issues up front and early.

We believe that the interests of the Crow and the Northern Cheyenne Tribes need to be fully considered in this EIS. Their economic and natural resources will be impacted by CBM development. We encourage the co-lead agencies to invite the Crow and Northern Cheyenne Tribes to participate as cooperating agencies for this EIS.

EPA's point of contact for Coal Bed Methane activities in Montana is John Wardell, EPA Montana Office Director at 406/441-1123 ext. 238. EPA's contact for this EIS activity is Cindy Cody, NEPA Chief in EPA's Denver Regional Ofce at 303/312-6228. We have established the following technical and legal team to assist in this EIS effort and our related CBM program actions in Montana:

Name	Function and Program	Phone
Wes Wilson	NEPA	303/312-6562
Mike Reed	NPDES permits	303-312-6132
David Hogle	UIC permits	303-312-6137
Barbara Burkland	Tribal Assistance Program	406/441-1141 ext 236
Jean Belille	Environmental Justice	303-312-6291
Julie DalSoglio	Water Quality Standards and TMDLs	406/441-1140 ext 256
Peggy Livingston	CWA and SDWA legal Office of Regional Counsel	303-312-6858
Kimi Matsumoto	NEPA and Indian law Office of Regional Counsel	303-312-6875

Please contact these EPA employees directly on any matter related to their areas of expertise. We look forward to working with the Montana DEQ, the BLM, the Crow Tribe, the Northern Cheyenne Tribe and the other cooperating agencies on this EIS.

Sincerely,

Max H. Dodson  
Associate Regional Administrator  
Ecosystems Protection and Remediation

Enclosures: Detailed Scoping Comments by EPA, 10 pages  
EPA to Redstone Gas Partners, January 1 \*7, 2001 „E pages  
EPA to BLM Buffalo Field Office, August 10, 2000 and January 2001, 11 pages  
EPA to Wyoming DEQ, December 20, 2000 and January 5, 2001, 7 pages

cc:

- Clifford Bird in Ground, Crow Tribe
- Jeri Small, Northern Cheyenne Tribe
- Dennis Hemmer, Wyoming DEQ
- Al Pierson, BLM, Wyoming
- Greg Hallsten, Montana DEQ
- Art Compton, Montana DEQ
- Mary Bloom, BLM, Miles City Field Office
- Bud Clinch, Montana DNRC
- Tom Richmond, Montana Board of Oil and Gas
- Bruce Williams, Redstone Gas Partners
- Paul Beels, BLM, Buffalo
- Bill Bear, South Dakota DNR